Nursing Facility Discharge Hearings

Bobbie Marshall
TX HHSC Fair and Fraud Hearings
Assistant Director

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Nursing Facility Discharge Hearings

- Brief History
- Rules and Regulations
- Facility Assessment
- Transfer and Discharge Rules
- Documentation Required
- Preparing for and Conducting the Hearing
- Evaluating Evidence and Making Decisions
- Q&A and Discussion

- 1965 - Medicare Coverage for Hospital Services Enacted
- No regulatory model for nursing homes existed- only hospital and medical models existed
- Began looking at Federal requirements for nursing homes
  - Physical Safety
    - fire-safe, clean, no abuse
  - Adequacy of treatment and services
    - Good outcomes
    - Improve patient function (no more deterioration)

- 1980's - Enforcement and regulations remained mostly unchanged
- 1980 and 1982 - Attempts to issue regulations for standards and new enforcement regulations failed
- Nursing Home Reform Act of 1987 - Improved standards of care in nursing homes

1) Requirement to participate in Medicare and Medicaid
2) Compliance with the regulations

Reform of Requirements for Long-Term Care Facilities – regulations updated in 2016 ((C)(2) Transfer/Discharge Documentation – Implemented in Phase 2, 2017.)

- Transfer or discharge be documented in the medical record.
- Specific information be exchanged with the receiving provider or facility when a resident is transferred.
- Defined emergent transfers to acute care and return to nursing home.
- Include discharge location on notice.
- Changes to notice = new notice with new appeal rights.

RULES AND REGULATIONS

Code of Federal Regulations

42 CFR Part 483

Centers for Medicare & Medicaid Services (CMS)
State Operations Manual
Appendix PP - Guidance to Surveyors for Long Term Care Facilities

State Policies

Facility Assessment

- **Facilities are required to determine their capacity and capability to care for the residents they admit. Facilities should not admit residents whose needs they cannot meet based on the Facility Assessment.**

- **Once admitted, residents have a right to remain in the facility unless the discharge or transfer meets one of the acceptable reasons for discharge or transfer.**

Definition of Transfer and Discharge:

Transfer and discharge includes movement of a resident to a bed outside of the certified facility whether that bed is in the same physical plant or not. Transfer and discharge does not refer to movement of a resident to a bed within the same certified facility.

42 CFR 483.5

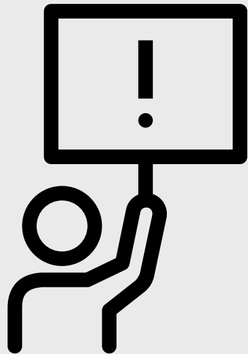
42 CFR 483.15(c)

The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless—

A) The resident's welfare *and* the resident's needs cannot be met in the facility;
(B) The resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;
(C) The safety of individuals in the facility is endangered due to the clinical or behavioral status of the resident;
(D) The health of individuals in the facility would otherwise be endangered;
(E) The resident has failed, after *reasonable and appropriate notice*, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility.
(F) The facility ceases to operate.

A The resident's welfare *and* the resident's needs cannot be met in the facility.

- Documentation in resident's medical record provided by the *resident's physician*
- Needs that can't be met & attempts to meet needs
- Services available at the receiving facility to meet the need(s) of resident which cannot be met at current facility
- Ask: what's changed since admission?



C The safety of individuals in the facility is endangered due to the clinical or behavioral status of the resident.

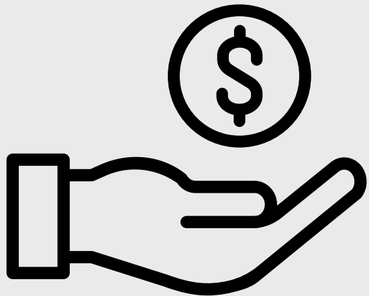
D The health of individuals in the facility would otherwise be endangered.

Documentation in resident's medical record provided by a *physician*

E

The resident has failed, after *reasonable* and *appropriate* notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility.

The transfer or discharge is documented in the resident's medical record



Notice Before Transfer or Discharge

Before a facility transfers or discharges a resident, the facility must, at least 30 days before the resident is transferred or discharged, notify the resident and the resident's representative.

The facility must send a copy of the notice to a representative of the Office of the State Long-Term Care Ombudsman.

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Contents of the Notice of Transfer or Discharge

- the reason for transfer or discharge
- the effective date of transfer or discharge
- the location to which the resident is transferred or discharged
- the right to appeal within 90 days after the notice
- contact information for assistance with filing an appeal and ombudsman
- contact information to IDD/MH authority, if applicable.

The notice must be in writing and in a language and manner the resident understands.

Timing of the Notice of Transfer or Discharge

Notice must be made as soon as practicable (less than 30 days) before transfer or discharge when:

- The safety of individuals in the facility would be endangered.
- The health of individuals in the facility would be endangered.
- The resident's health improves sufficiently to allow a more immediate transfer or discharge.
- An immediate transfer or discharge is required by the resident's urgent medical needs.
- A resident has not resided in the facility for 30 days.
- Facility closure.

Preparing for and Conducting the Hearing

What are some ways you can prepare for the hearing?

- Review appeal request:
  - Who requested appeal
  - The resident's current status
  - Reason for discharge
  - Verify special accommodations (interpreters, etc.)
  - Attendees
  - Review evidence and discharge notice
  - Organize/label evidence
  - Ensure all parties have received evidence*

To: Appellant and or Appellant's Representative
Nursing Facility

Re: Evidence for Nursing Facility Discharge Hearings

In accordance with the handbook citation below, the Nursing Facility must provide the items referenced to the Hearings Officer by fax or mail at least **5 days prior** to the scheduled hearing date and time. **See the Notice of Hearing for the Hearings Officer's address and fax information.**
It is the Nursing Facility's responsibility to provide an identical copy of the documents to the Appellant or the Appellant's Representative before the hearing. If the Appellant or the Appellant's Representative submits documents to be considered at the hearing, the Hearings Officer will fax them to the Nursing Facility Representative before the hearing.

Fair and Fraud Hearings Handbook, Section 1610- Discovery- 1 Texas Administrative Code (TAC) §357.13(b)(7)

All parties in the hearing have the right to examine the documents, before the hearing, that will be considered at the hearing and used to make a decision. **Before the hearing, the agency representative sends copies of all documents to be used in the hearing to the hearings officer and the appellant.** The packet includes, but is not limited to:

- the agency action notice that prompted the appeal;
- application form and worksheets relevant to the appealed action;
- verifications used to make the decision that is being appealed;
- forms, notices and other correspondence sent to and received from the client concerning the appealed action;
- assistance authorization documents.
- all other materials relating to the appealed action; and
- appropriate policy on which the agency is relying.

Key parties involved

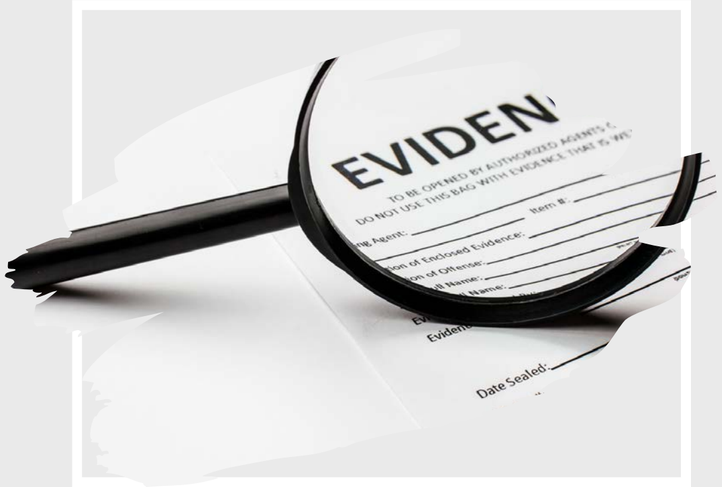
Nursing facility discharge hearings involve the resident, nursing facility staff/attorney, often the resident's family, and usually a state representative (ombudsman).

Control the hearing:

- Maintain order
- Require all parties to be respectful
- Keep on topic- you're only focused on the transfer/discharge

Evaluating the Evidence

- Timing of notice
- Contents of notice
- Medical records



NOTICE OF DISCHARGE / TRANSFER

Date: 3/4/16

Resident Name:

Effective/ Anticipated Date of Discharge: 3/11/16

Discharged/ Transferred to: Department of Homeless Services

This form is to notify you that you are being discharged from for the following reason: **In order for this form to be valid, the appropriate box MUST be checked and the explanation MUST be completed.**

☒ Planned Discharge (Includes: completion/continuation of treatment)
Explanation: As per interdisciplinary team resident has completed Health goals and no longer requires skilled nursing care.

☐ Transfer to hospital for the following medical treatment/evaluation
Explanation: _____

☐ Transfer to hospital for psychiatric evaluation. (Describe specific behavior and alternatives attempted.)
Explanation: _____

☐ Discharge against medical advice. (Describe why discharge is not medically indicated)
Explanation: _____

☐ Your transfer and discharge is being made as a result of your failure, after reasonable and appropriate notice, to pay for your stay in the facility.

_____

This discharge is being made at a time when there are no Medicaid charges in dispute and no appeal pending of a denial of benefits or funds for payment.

Common Notice Errors

- Facilities using notice templates with incorrect information
- Location of discharge is missing or gives an inappropriate location
- Resident not provided a copy of the discharge
- Using discharge for bill collections, prior to a final Medicaid decision being made

The evidence may include:

- the policy being followed;
- excerpts from progress notes;
- doctor’s orders;
- prescriptions;
- recommendations from other professional staff about the resident’s needs;
- documentation of alternative room assignments;
- documentation of other steps the facility may have taken to address the resident’s status or situation; and
- any other documentation supporting the need for discharge.

Hearing officer determines that the discharge was inappropriate:

- Facility must readmit the resident immediately, or to the next available bed.

- If the discharge has not yet taken place the facility must allow the resident to remain in the facility.

Hearing officer determines that the discharge was appropriate:

- The resident is notified in writing of this decision.

Q&A

Thank You

BOBBIE MARSHALL, TX

BOBBIE.MARSHALL@NAHO.ORG

Resources:

- https://www.cms.gov/Research-Statistics-Data-and-Systems/Research/HealthCareFinancingReview/Downloads/CMS1192068dl.pdf
- https://www.aging.senate.gov/imo/media/doc/hr172tl.pdf
- Sedensky, Matt. “Nursing Homes Turn to Eviction To Drop Difficult Patients,” Associated Press. Accessed at
- https://apnews.com/95c33403b5024b4380836d3ed3dfecb0/nursing-homes-turn-eviction-drop-difficult-patients May 8, 2016.
- 7 The New York Times, ‘They Just Dumped Him Like Trash’: Nursing Homes Evict Vulnerable Residents, June 21, 2020. Accessed
- at https://www.nytimes.com/2020/06/21/business/nursing-homes-evictions-discharges-coronavirus.html on November 5,
- 2020.
- https://oig.hhs.gov/oei/reports/OEI-01-18-00250.pdf
- https://qsep.cms.gov/data/352/AdmissionTransferandDischarge.pdf